

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
SUPPLEMENTAL
BRIEF**

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P/S

75-7203

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

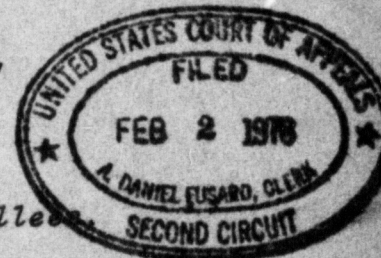
ROBERT ABRAHAMSON and
MARJORIE ABRAHAMSON,

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P/S
Plaintiffs-Appellants,

vs.

MALCOLM K. FLESHNER, WILLIAM J. BECKER,
HAROLD B. EHRLICH, LEON POMEFANCE,
FLESHNER BECKER ASSOCIATES, and
HARRY GOODKIN & COMPANY,

Defendants-Appellees



SUPPLEMENTAL BRIEF FOR APPELLEES
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WILLIAM J. BECKER,
HAROLD B. EHRLICH AND
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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 212 - SEPTEMBER TERM, 1975

DOCKET NO. 75-7203

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ROBERT ABRAHAMSON and	:
MARJORIE ABRAHAMSON,	:
	:
Plaintiffs-Appellants,	:
	:
v.	:
	:
MALCOLM K. FLECHNER, WILLIAM J.	:
BECKER, HAROLD B. EHRLICH, LEON	:
POMERANCE, FLECHNER BECKER	:
ASSOCIATES and HARRY GOODKIN &	:
COMPANY,	:
	:
Defendants-Appellees.	:

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SUPPLEMENTAL BRIEF OF DEFENDANTS-
APPELLEES FLECHNER, BECKER,
EHRLICH AND FLECHNER BECKER
ASSOCIATES CONCERNING THE INVESTMENT
ADVISERS ACT OF 1940

This supplemental memorandum is submitted by
defendants-appellees Flechner, Becker, Ehrlich and Flechner
Becker Associates in accordance with the interim opinion of
this Court requesting "supplemental briefs on the issues
raised under the Advisers Act, including whether there exists
a private right of action under that Act."

Defendants contend that (i) the federal district courts have no jurisdiction to entertain actions at law under the Investment Advisers Act; (ii) there is no express private right of action for damages under the Advisers Act and under the established tests none may be implied; and (iii) even assuming that jurisdiction could be found and a right of action implied, summary judgment for defendants must be affirmed for want of any showing of damages compensable under law.

A R G U M E N T

I.

THE DISTRICT COURTS HAVE NO JURISDICTION TO ENTERTAIN ACTIONS AT LAW UNDER THE ADVISERS ACT

A. The Plain Meaning of Section 214 Is That There Is No Jurisdiction Under The Investment Advisers Act Over Actions At Law

In each of the five federal securities laws which preceded the Investment Advisers Act, Congress included language expressly granting jurisdiction to the district courts over actions at law. Congress, however, having considered the inclusion of a similar jurisdictional provision in the Investment Advisers Act, expressly chose to omit such language from that Act and thereby necessarily

precluded the exercise of any such jurisdiction by the district courts.¹

As this Court properly recognized in its interim opinion, "Congress used different phraseology in Section 214 of the Advisers Act than in the corresponding jurisdictional provisions of the other federal securities laws." Slip. Op. at 628 (November 21, 1975).² Unlike the comparable jurisdictional provisions of the other federal securities laws, the jurisdictional provision of the Investment Advisers Act, Section 214, contains no reference to "actions at law," and the jurisdiction of the federal courts is thus limited to criminal proceedings and suits in equity. Section 214 provides in relevant part:

"The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this subchapter or the rules, regulations, or orders thereunder. . . ."

Where Congress intended to confer jurisdiction on

¹

The deletion of language which would have conferred such jurisdiction from the earlier drafts of the Investment Advisers Act is discussed at pages 8-11, infra.

²

The Act is also conspicuously different from the other securities acts because it contains no venue provision for "actions at law." (See Appendix A.)

the district courts over actions for damages, as it did in the other five federal securities statutes, it did so in clear and unambiguous language using essentially the same verbal formulation; namely, "actions at law brought to enforce any liability or duty created by" the statute. It was precisely this language that was eliminated from the Investment Advisers Act.

The first of the federal securities laws was the Securities Act of 1933, 15 U.S.C. § 77a, et seq. The jurisdictional section of that Act reads, in relevant part:³

"The district courts of the United States . . . shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter"
15 U.S.C. § 77v (emphasis added).

The second federal securities law was the Securities Exchange Act of 1934, 15 U.S.C. § 77a, et seq., which contains the following jurisdictional grant in Section 27:

"The district courts of the United States . . . shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions

³

To simplify comparison of the jurisdictional sections, only the first sentence of each is quoted in the text. Each jurisdictional section is set out in full in Appendix A.

at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder" 15 U.S.C. § 78aa (emphasis added).

The third of the federal securities laws was the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79a, et seq. Section 25 of that Act contains virtually identical jurisdictional language:

"The District Courts of the United States . . . shall have jurisdiction of violations of this chapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or the rules, regulations, or orders thereunder" 15 U.S.C. § 79y (emphasis added).

The fourth federal securities law was the Trust Indenture Act of 1939, 15 U.S.C. § 77aaa, et seq. Section 322 of that Act incorporated by reference the jurisdictional provision of the 1933 Act:

"Jurisdiction of offenses and violations under, and jurisdiction and venue of suits and actions brought to enforce any liability created by, this subchapter, or any rules or regulations or orders prescribed under the authority thereof, shall be as provided in section 77v(a) of this title." 15 U.S.C. § 77vvv.

In the Investment Company Act of 1940 jurisdiction over "actions at law" was again conferred on the federal courts by inclusion of the same language:

"The district courts of the United States . . . shall have jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this subchapter or the rules, regulations, or orders thereunder" 15 U.S.C. § 80a-43 (emphasis added).

Thus, the conclusion is inescapable from the face of the statutes that Congress purposely limited the jurisdiction of the district courts under the Investment Advisers Act to only those enforcement proceedings expressly authorized by the Act, i.e., criminal proceedings and SEC injunctive suits. The Act did not contemplate and Congress did not intend to confer jurisdiction over actions at law.

This conclusion is further supported by the fact that the Investment Company Act and the Investment Advisers Act were both passed by Congress on the same day, August 22, 1940, and constituted Titles I and II respectively of the same bill, H.R. 10065. In Title I, Congress specifically included the "actions at law" language, thus creating district court jurisdiction over such actions; in Title II, Congress purposely did not include that language.

As a general principle of statutory construction, the omission of words from one statute which are used

in another statute pertaining to the same subject matter is interpreted as a presumptive change of meaning.

"Unless the context indicates otherwise, words or phrases in a provision that were used in a prior act pertaining to the same subject matter will be construed to be used in the same sense. But if words used in a prior statute to express a certain meaning are omitted, it will be presumed that a change of meaning was intended." 2A Sutherland, Statutes and Statutory Construction § 51.02 (4th ed. 1973)

This is especially so when the difference in language is between parallel sections of two acts passed on the same day:

"[A]pplication of the rule that statutes in pari materia should be construed together is most justified and light from that source has the greatest probative force, in the case of statutes relating to the same subject matter that were passed at the same session of the legislature, especially if they were passed or approved or take effect on the same day. . . ." Id. § 51.03.

A fortiori, when the two acts were not only passed on the same day, but constituted Titles I and II of the same bill, the courts must recognize and give effect to critical changes in statutory draftmanship.

The omission of any reference to "actions at law brought to enforce any liability or duty" in Section 214 of the Investment Advisers Act represents a deliberate decision by Congress to withhold jurisdiction from the federal courts over private damage actions and to refrain from creating any such right. Analysis

of the legislative history of the Act clearly confirms that conclusion.

LEGISLATIVE HISTORY

B. The Legislative History Clearly Demonstrates That Congress Intended That The District Courts Shall Not Have Jurisdiction Under the Investment Advisers Act to Entertain Actions At Law

1. 1940 Legislative History

The Investment Advisers Act was introduced in 1940 as the result of a report prepared by the Securities and Exchange Commission under Section 30 of the Public Utility Holding Company Act, 15 U.S.C. § 79z-4. During the course of Congress' deliberations, the bill went through approximately twelve major drafts.

The first draft of Title II of the bill incorporated by reference Section 40 of the Investment Company Act draft (Title I), which itself incorporated by reference Section 25 of the Public Utility Holding Company Act. The latter section expressly confers on the federal courts jurisdiction to entertain "actions at law brought to enforce any liability or duty created by" the Act. Thus, as originally proposed, both the Investment Company Act and the Investment Advisers Act expressly granted the federal courts jurisdiction to entertain actions at law.

However, during consideration of the bill by the Senate and House Committees and, thereafter, during negotiations between the Securities and Exchange Commission and representatives of the investment companies and investment advisers industries, the jurisdictional sections of both the Investment Company Act and the Investment Advisers Act were changed. These changes are detailed in a chart, annexed to this brief as Appendix B, which traces chronologically the modifications in the jurisdictional sections of both acts from the first draft of the bill to its final form as enacted.⁴ As the Court will observe, the chart demonstrates two important facts.

First, the jurisdictional provisions of both the Investment Company Act and the Investment Advisers Act were amended in many of the numerous redrafts of the bill, and it is thus apparent that Congress was not only aware of the significance of these provisions but paid close attention to their proper scope and language.

Second, the critical departure in the jurisdictional sections of the two Acts occurred between March 14, 1940, at which point both Acts contained language conferring jurisdiction over actions at law on the federal courts, and May 24,

4

For the Court's convenience, verbatim copies of the complete text of each draft of the pertinent jurisdictional sections are reproduced in Appendix C.

1940, when all references to "actions at law" or to "liabilities created by" the Act were deleted from the Investment Advisers Act. From the submission of the draft of May 24, 1940 until the final enactment of the bill, the scope of the jurisdiction which Congress intended to confer upon federal courts for violations of the Investment Company Act differed substantially from that which Congress intended to provide for violations of the Investment Advisers Act.

During the period March 14, 1940 to May 24, 1940, when language conferring jurisdiction over "actions at law" was deleted from the Investment Advisers Act, four weeks of hearings were held on S. 3580 before a subcommittee of the Committee on Banking and Currency of the Senate.⁵ Following these hearings, the Securities and Exchange Commission and representatives of the industry, who had bitterly opposed the whole concept of SEC regulation, met to negotiate changes in the proposed bill.⁶ The conferences between the SEC and

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The April hearings were conducted on April 2, 3, 4, 5, 8, 9, 10, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25 and 26. Two later hearings were held on May 31 and June 4, 1940. Hearings on S.3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. (1940) [hereinafter "Senate Hearings"]

6

Although the investment company industry and the investment advisers industry had each cooperated with the Commission throughout the period of the SEC study, (Senate Hearings at

(Footnote cont'd. on next page)

industries lasted three weeks⁷ at which time representatives of the investment advisers industry redrafted Title II of the bill and submitted it to the SEC. The SEC accepted the bill as rewritten by the industry⁸ and forwarded it to Congress.

It is evident from this history that Congress considered and purposely eliminated any grant of jurisdiction over actions at law.

2. 1960 Legislative History

During the period 1956-1959, the SEC submitted "[e]xtensive proposals" to Congress relating to the securities laws, including amendment of the Investment Advisers

(Footnote cont'd.)

41), there was no agreement on the provisions of the draft bill before the Commission submitted its first draft of the bill to Congress. Senate Hearings, at 41-42, 175, 345. This resulted in vehement industry opposition to both Titles I and II of the proposed bill. See Hearings on H.R. 10065 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce, 76th Cong., 3d Sess. (1940), at 71-72, 88-90, 95 [hereinafter cited as "House Hearings"]. Following the April hearings, the SEC and representatives of both industries negotiated changes in the proposed bill. House Hearings at 71-72, 88-90, 95. See also S. Rep. No. 1775, 76th Cong., 3d Sess. at 20-21.

7
86 Cong. Rec. 15,413 (daily ed. Aug. 8, 1940) (remarks of Senator Wagner).

8
It was the industry draft which was ultimately enacted as the Investment Advisers Act of 1940. Senate Hearings at 1141. See Dwight Rogers, A Brief History of the Investment Counsel Association, Ch. 5, April 1975 (unpublished draft at Investment Counsel Association, 127 E. 59th St., New York City).

Act. S. Rep. No. 1760, 86th Cong., 2d Sess. 2 (1960). No amendment was proposed with regard to Section 214.⁹ While effecting 19 changes in 11 of the Act's 21 sections, Congress, in the amendments to the Act passed in 1960, left Section 214 unaltered.¹⁰

The thrust of the 1960 amendments was to strengthen the Commission's enforcement powers in four significant respects.¹¹ It empowered the Commission to deny, delay or cancel an individual's registration as an investment adviser if he or she failed to meet tightened registration qualifications. Pub. L. No. 86-750, §§ 2, 3, 4 & 5, 74 Stat. 885, amending § 203 of the Act, 15 U.S.C. § 80b-3. It empowered the Commission to promulgate rules requiring advisers to keep certain books and records and subjected

9

Significantly, although the question of jurisdiction had been directly raised three years earlier in an action where the Commission had filed an amicus brief supporting the recognition of private actions, Hull v. Newman, Kennedy & Co., Civil Action No. 118-283 (S.D.N.Y. 1957) (settled), see 24 SEC Ann. Rep. 162 (1959), the Commission made no proposal that Congress amend the Act to create private actions or to confer jurisdiction on the federal courts to entertain them.

10

The following sections of the Act were amended in 1960: 202(a)(12), 202(a)(18), 203(c)(1)(f), 203(c)(2), 203(d), 203(e), 203(g), 204, 205, 206, 208 [caption], 208(c), 209(e), 210(b), 211(a), and 217. Three sections or subsections were added: 206(4), 208(d) and 222.

11

The report itself states that "A major concern of the bill is to aid the Commission in enforcing compliance

(Footnote cont'd. on next page)

such books and records to reasonable inspection by the Commission. Pub. L. No. 86-750, § 6, 74 Stat. 885, amending § 204 of the Act, 15 U.S.C. § 80b-4. It extended the antifraud provision, Section 206, to reach the activities of all investment advisers, whether or not registered with the Commission. Pub. L. No. 86-750, § 8, 74 Stat. 885, amending § 206 of the Act, 15 U.S.C. § 80b-6. And, it amended Section 209, the section of the Act entitled "Enforcement of Title," to allow the Commission to obtain an injunction against aiders and abettors as well as principal violators. Pub. L. No. 86-750, § 12, 74 Stat. 885. No provision was made for actions

(Footnote cont'd.)

with the Act." S. Rep. No. 1760, 86th Cong., 2d Sess. 4 (1960). Congress noted once again that unlike the other federal securities statutes the Investment Advisers Act envisioned a limited enforcement scheme with few substantive provisions:

"Of the five acts administered by the Securities and Exchange Commission, the committee is of the opinion that confronted by the problems it must solve, the Investment Advisers Act of 1940 is the most inadequate. The Investment Advisers Act of 1940 was passed as title II of the bill, of which title I was the Investment Company Act. Unlike other federal securities statutes, it has few substantive or regulatory provisions. Modeled somewhat on the broker-dealer registration provisions of the Securities and Exchange Act of 1934, it resembles a continuing census of the Nation's investment advisers." S. Rep. No. 1760, 86th Cong., 2d Sess. 2 (1960) (emphasis added).

at law against aiders and abettors, and, as the Goodkin Supplemental Brief makes clear, the omission of any such provision represented a deliberate decision on the part of Congress, with the agreement of the Commission, to ensure that no such right of action could be implied by the courts as they had done under Section 10(b) of the 1934 Act.

3. 1970 Legislative History

In 1970, Congress amended both the Investment Company Act and the Investment Advisers Act. It is most significant that, while Congress added an express private right of action against certain investment advisers under the Investment Company Act, it did not add that right to the Investment Advisers Act.¹²

Section 36(b) of the Investment Company Act, 15 U.S.C. § 80a-35(b), added by the 1970 amendments, expressly

¹²

In their description of the Advisers Act in 1970, the Senate and House reports again emphasized the limited scope of the Advisers Act:

"The Investment Advisers Act of 1940 [(the Advisers Act)] is a companion statute to the Investment Company Act. It regulates the activities of those who receive compensation for advising others with respect to investments in securities or who are in the business of issuing analyses or reports concerning securities. Like other Federal securities statutes, the Advisers Act prohibits fraudulent practices and requires those subject to its provisions to

(Footnote cont'd. on next page)

creates a private right of action concerning payments to mutual fund investment advisers and was, in fact, the central feature of the 1970 legislation. The amendment was designed to resolve the conflict created by Brouk v. Managed Funds, Inc., 286 F.2d 901 (8th Cir. 1961), vacated as moot, 369 U.S. 424 (1962), and Brown v. Bullock, 294 F.2d 415 (2d Cir. 1961).

The manner in which Congress proceeded demonstrates that it is extremely careful when it creates a right of action in this area and leaves very little, if anything, open to doubt. Section 36(b), therefore, contains at least ten specific characteristics which demonstrate Congress' caution. Section 36(b):

1. Creates in the investment adviser "a fiduciary duty with respect to the receipt of compensation for services" paid by a registered investment company.

(Footnote cont'd.)

register with the Commission and to keep books and records in accordance with Commission rules. It also empowers the Commission to make regular inspections and to take administrative remedial action against applicants for registration and registered advisers." S. Rep. No. 91-184, 91st Cong., 1st Sess. 43-44 (1969); H.R. Rep. No. 91-1382, 91st Cong., 2d Sess. 12 (1970) (bracketed matter appears only in House report).

2. Explicitly specifies that an action may be brought under Section 36(b) for breach of such fiduciary duty.

3. Specifies and limits the persons or entities who may be parties defendant.

4. Specifies and limits the persons or entities who may bring the action.

5. Specifies that plaintiff shall have the burden of proof (§ 36(b)(1)).

6. Prescribes certain standards of evidence (§ 36(b)(2)).

7. Limits recoverable damages to actual damages resulting from the breach of fiduciary duty not exceeding compensation paid to the investment adviser (§ 36(b)(3)).

8. Excludes certain payments from coverage by the section (§ 36(b)(4)).

9. Gives the district courts exclusive jurisdiction (§ 36(b)(5)).

10. Limits the res judicata effect of a court finding concerning a breach of fiduciary duty (§ 36(b)(6)).

S. Rep. No. 91-184, 91st Cong., 1st Sess. 2, 15-17 (1969);
H.R. Rep. No. 91-1382, 91st Cong., 2d Sess. 7-8, 36-38
(1970).

The fact that no similar changes were made in the Investment Advisers Act confirms Congress' understanding of the limited nature and purpose of that Act.

4. The Securities and Exchange Commission's Recent Proposal That Congress Amend Section 214 of the Act Confirms the Absence of Jurisdiction Over Actions at Law Under the Act.

The Commission itself has recently provided further evidence that the federal courts have no jurisdiction over actions at law under the Investment Advisers Act as presently written. Three weeks after this Court requested that the Commission submit an amicus brief setting forth its views on the existence of a private right of action under the Advisers Act and necessarily jurisdiction over such actions under Section 214, the Commission proposed¹³ to Congress that it amend Section 214 to include the very same words, i.e., "and actions at law brought to enforce any liability or duty created by [the Act]," which Congress specifically eliminated from the Act in 1940 as the result of the compromise reached between the industry, the Commission and Congress. Unquestionably, the legislative history does not support the Commission's assertion that the proposed amendment would

¹³

Legislation to Amend Investment Advisers Act of 1940 Proposed by Securities and Exchange Commission, SEC Investment Advisers Act Release No. 491 (December 15, 1975), [Current] CCH Fed. Sec. L. Rep. ¶ 80,341 at 85,895 (1975).

merely "clarify" an existing right. Id. Indeed, the legislative history is to the contrary.

II.

THE COURT SHOULD NOT IMPLY A RIGHT OF ACTION FOR DAMAGES UNDER THE INVESTMENT ADVISERS ACT

In Cort v. Ash, 422 U.S. 66 (1975), the Supreme Court set down the tests for determining whether a private remedy is implicit in a statute not expressly providing such remedy. These tests are:

"First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,' . . . that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? . . . Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? . . . And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?" 422 U.S. at 78

Applying these tests, clearly no private right of action may be implied under the Investment Advisers Act.

The Investment Advisers Act does not expressly provide for any private right of action for damages. The clearest indication that Congress did not intend to imply

such rights is that it deliberately eliminated from the Act the very language which would have given the federal courts the jurisdiction to entertain such actions at law. See DeRenzis v. Levy, 297 F. Supp. 998, 1003 (S.D.N.Y. 1969).

The whole structure of the Investment Advisers Act contemplates limited regulation of the industry through SEC enforcement proceedings and through the threat of criminal penalties.

Section 203, 15 U.S.C. § 80b-3, provides for registration of investment advisers and is clearly intended to fulfill the census-taking purpose of the Act,¹⁴ by providing the information needed by the SEC to effectuate regulation of the industry.¹⁵

Section 209(a) of the Act, 15 U.S.C. § 80b-9(a), clearly provides that enforcement is to be by the Commission.

"Whenever it shall appear to the Commission . . . that the provisions of this subchapter or of any rule or regulation prescribed under the authority thereof, have been or are about to be violated by any person, it may in its discretion require . . . such person to file with it a statement. . . ." (emphasis added).

¹⁴

The limited census-taking and information-gathering purpose of the Advisers Act was repeatedly emphasized in the 1940 Congressional hearings. Senate Hearings at 48, 51, 319.

¹⁵

The same function is served by the periodic reports provision in section 205, 15 U.S.C. § 80b-4.

Similarly § 209(e) provides that:

"Whenever it shall appear to the Commission that any person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of this subchapter, . . . it may in its discretion bring an action . . . to enjoin. . . ." (emphasis added).

Section 210, 15 U.S.C. § 80b-10, limits disclosure by the Commission that an investigation is being conducted. The legislative history of the Advisers Act demonstrates Congressional recognition that investigations should be confidential lest the confidence on which the advisory business is based be destroyed by the mere initiation of an investigation, regardless of its ultimate outcome.¹⁶ The strictures placed on the SEC's investigatory authority under the Act confirm the limited nature of the regulatory scheme. To imply a private right of action is inconsistent with the safeguards Congress carefully provided for SEC enforcement.

Finally, omission of jurisdiction over "actions at law" equally represented a recognition by Congress of the existence of adequate remedies under state law, and a decision not to federalize an area traditionally left to the states.

¹⁶

See House Hearings at 89-90, 95.

Thus, under each of the four tests of Cort, implication of a private right of action is unjustified.

III.

THE HOLDING IN BOLGER IS CONTRARY
TO THE PLAIN LANGUAGE OF SECTION
214 AND UNSUPPORTED BY THE
LEGISLATIVE HISTORY

Plaintiffs rely principally on Bolger v. Laventhol, Krekstein, Horwath & Horwath, 381 F. Supp. 260 (S.D.N.Y. 1974), in support of their contention that the district courts have jurisdiction over and that a private right of action may be implied under the Investment Advisers Act.¹⁷ Bolger's analysis, however, is poorly reasoned and its reference to the Act's legislative history is both incomplete and misleading.

The Bolger court was wrong in its assertion that

17

The other decisions which have held that there is an implied right of action under the Investment Advisers Act, and jurisdiction to entertain such actions, generally adopt Bolger's faulty reasoning without meaningful analysis. See Jones v. Equitable Life Assurance Society, [1974-1975 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 94,986 (S.D.N.Y. 1975) (Wyatt, J.); Angelakis v. Churchill Management Corp., [Current] CCH Fed. Sec. L. Rep. ¶ 95,285 (N.D. Cal. 1975) (Williams, J.). Thus, there is no need for separate analysis of those opinions. Contrary conclusions were reached in Gammage v. Roberts, Scott & Co., [Current] CCH Fed. Sec. L. Rep. ¶ 94,761 (S.D. Cal. 1974) (Turrentine, J.) and Greenspan v. Eugene Campos Del Toro, Civil No. 73-638 (S.D. Fla. May 17, 1974) (Eaton, J.; unreported opinion).

"[t]he legislative history of the Advisers Act does not contain any affirmative indication by Congress that a private right of action should be denied, or that enforcement actions by the Securities and Exchange Commission and criminal prosecutions by the Justice Department were intended to be the sole and exclusive remedies available for violations of the Act." 381 F. Supp at 264 (emphasis in original).

To the contrary, the legislative history affirmatively demonstrates that Congress considered and rejected a proposal that would have granted the federal courts jurisdiction over actions at law under the Investment Advisers Act. There could be no clearer expression of legislative intent. See De Renzis, supra, p. 18.

By the same token, the Bolger court's suggestion that the omission of any reference to "actions at law" can be dismissed by merely attributing it to Congress' failure to create any express right of action under the Act is totally illogical. (See Main Brief, pp. 51-55.)

The Bolger court also attempted to dismiss the absence from Section 214 of the critical "actions at law" language¹⁸ by concluding that the word "violations" in that section confers jurisdiction over implied damage actions under the Investment Advisers Act:

¹⁸

Apparently the affirmative elimination of such language from the earlier drafts of Section 214 had not been brought to the court's attention.

"First, defendants' argument overlooks the language of Section 214 which confers jurisdiction over 'violations' of the statute and the rules promulgated thereunder. . . . The term 'violations' is not limited to criminal proceedings (see, Osborne v. Mallory, 86 F. Supp. 869, 979 [sic] (S.D.N.Y. 1949)). It is therefore broad enough to confer jurisdiction on the district courts for an implied damage action such as the instant suit. . . ."
381 F. Supp. at 264. (Emphasis in original.)

Thus, in the court's view, "violations" should be interpreted to include both criminal proceedings and civil damage actions. Such an interpretation of Section 214 is unsupportable.

First, Bolger's reading of "violations" ignores the plain language of Section 214 and the conspicuous difference between its omission of any reference to "actions at law brought to enforce any liability or duty created by" the Act and the express inclusion of that language in each of the five preceding federal securities laws.

Second, if the word "violations" includes "actions at law," Congress engaged in pointless redundancy when it drafted the jurisdictional provisions of the other five securities laws, since each of those acts expressly confers jurisdiction over both "violations" and "actions at law."¹⁹

¹⁹

Section 27 of the Securities Exchange Act of 1934 provides in relevant part:

"The district courts of the United States . . . shall have exclusive jurisdiction of violations of this chapter or the rules and regulations

(Footnote cont'd. on next page)

Third, the Bolger court's interpretation suggests that Congress, in enacting Section 214, created exclusive federal court jurisdiction over criminal offenses and actions at law and concurrent jurisdiction with state courts over suits in equity. If this were so, the Investment Advisers Act would stand alone in its peculiar division of exclusive and concurrent jurisdiction, since, in every other securities act except one, the federal courts are given exclusive jurisdiction of criminal proceedings and concurrent jurisdiction of civil actions and injunctive suits.²⁰

Fourth, in rejecting the argument that the word "violations" in Section 214 is limited to criminal offenses, the Bolger court relied upon the following passage from Osborne v. Mallory, 86 F. Supp. 869, 879 (S.D.N.Y. 1949):

(Footnote cont'd.)

thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder (emphasis added).

If the argument endorsed in Bolger is correct, Congress could have stopped after the word "equity" and omitted all of the underscored language of Section 27 without changing the scope of the jurisdictional grant in that section.

20

The 1934 Act gives the federal courts exclusive jurisdiction of all proceedings, civil and criminal, under that Act. (See Appendix A, infra.)

"The word 'violation' is not limited to a criminal case; it includes also civil litigation. . . ."

This passage, however, is clearly dictum, resulting from the Osborne court's misreading of Section 27 of the 1934 Act, which by its terms expressly confers jurisdiction over actions at law on the federal court. Osborne's harmless misreading of Section 27, however, makes no sense in the context of Section 214 and results in fabrication of a jurisdictional grant where Congress, by omitting the phrase "actions at law", deprived federal courts of jurisdiction over civil damage actions.

In light of the legislative history of the Investment Advisers Act of 1940, the amendments of 1960 and 1970, the Commission's recently proposed amendments, and the foregoing analysis, this Court would be wholly unwarranted in adopting Bolger's simplistic proposition that the jurisdiction which Congress refused to grant by deleting any reference to "actions at law" from the early drafts of Section 214 is nonetheless granted by implication in its use of the word "violations".

IV.

THE GENERAL GRANT OF JURISDICTION IN
28 U.S.C. § 1331(a) CANNOT NULLIFY THE
SPECIFIC CONGRESSIONAL EXCLUSION IN
SECTION 214 OF THE INVESTMENT ADVISERS
ACT

The district courts' lack of jurisdiction to entertain actions arising under the Investment Advisers Act

is not cured by the jurisdictional provisions of 28 U.S.C. § 1331(a).²¹

The "inferior federal courts" are courts of limited jurisdiction which have only that jurisdiction conferred upon them by Congress pursuant to Article III. Because of this limited jurisdiction, the presumption is well established in pleading, and is equally applicable here, that "a cause is without its jurisdiction, until the contrary appears." Turner v. Bank of North America, 4 U.S. (4 Dall.) 8, 11, 1 L.Ed. 718 (1799). That is, the jurisdiction of the district courts is presumed not to exist. See, e.g., Fifty Associates v. Prudential Ins. Co. of America, 446 F.2d 1187 (9th Cir. 1970). "The jurisdiction of the federal courts is carefully guarded against expansion by judicial interpretation. . . ." American Fire & Casualty Co. v. Finn, 341 U.S. 6, 17 (1951).

Where Congress deliberately refrained from conferring jurisdiction for certain actions under a particular

21

Section 1331(a) reads in full:

"§ 1331. Federal question; amount in controversy;
costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

statute, the general grant of Section 1331(a) cannot be used by the courts to expand by implication the limited jurisdiction conferred on them by the specific statute.

The instant case is analogous to and is governed by the logic of Durrouseau v. United States, 10 U.S. (6 Cranch) 307 (1810), where Chief Justice Marshall held that the appellate jurisdiction of the Court extended only to those cases where such jurisdiction had been expressly conferred.

"They [the Congress] have not declared that the appellate power of the court shall not extend to certain cases; but they have described affirmatively its jurisdiction, and this affirmative description has been understood to imply a negative on the exercise of such appellate power as is not comprehended within it." Id. at 314. (Quoted with approval in Ex parte McCordle, 74 U.S. 505, 513 (1868).)

Application of this principle to the instant case mandates the conclusion that when Congress affirmatively described the jurisdiction of the district courts under the Investment Advisers Act and omitted to include "actions at law," it deprived the district courts of jurisdiction over "actions at law" brought under that Act. If Section 1331(a) were held to create federal court jurisdiction in this case, that logic would create jurisdiction for every action charging violation of any federal statute, no matter how articulate the statute might be in expressly denying the right of private remedy.

V.

SUMMARY JUDGMENT FOR DEFENDANTS
MUST BE AFFIRMED FOR WANT OF ANY
SHOWING OF DAMAGE COMPENSABLE
UNDER LAW

Assuming that jurisdiction under the Investment Advisers Act could somehow be found and a private right of action judicially created, the District Court's grant of summary judgment to defendants must nevertheless be affirmed. Plaintiffs concede that the total amounts received from the partnership exceed their capital contributions (135a). Therefore, Judge Carter correctly held plaintiff's claim fatally defective:

"Plaintiffs have suffered no damages and hence have failed to state a cause of action under the . . . Investment Advisers Act of 1940."
392 F. Supp. 740, 744 (S.D.N.Y. 1975) (298a).

In the District Court, plaintiffs relied principally on Rule 10b-5 for their claim. However, when the Supreme Court's reaffirmation of the purchaser-seller requirement in Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975), precluded that theory, plaintiffs shifted their focus to a claim of an implied right of action under the Investment Advisers Act.

Even if, however, the Investment Advisers Act gave rise arguendo to an implied right of action for damages,

nowhere is there anything in the language, legislative history of the Act or case law to support the application of any different measure of damages than the out-of-pocket rule.

CONCLUSION

For the reasons stated here and in our main briefs the judgment below should be affirmed.

January 30, 1976

Respectfully Submitted,

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STATUTORY APPENDIX A
JURISDICTIONAL PROVISIONS
OF THE SECURITIES LAWS

Securities Act of 1933

Section 22, 15 U.S.C. § 77v, provides:

Jurisdiction of offenses and suits

(a) The district courts of the United States, and the United States courts of any Territory, shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 225 and 347 of Title 28. No case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against it in the Supreme Court or such other courts.

(b) In case of contumacy or refusal to obey a subpoena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission may issue to such person an order requiring such person to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

Securities Exchange Act of 1934

Section 27, 15 U.S.C. § 78aa, provides:

Jurisdiction of offenses and suits

The district courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 225 and 347 of Title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against it in the Supreme Court or such other courts.

Public Utility Holding Company Act of 1935

Section 25, 15 U.S.C. § 79y, provides:

Jurisdiction of offenses and suits

The District Courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this chapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in

the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 225 and 347 of Title 28, and section 7 of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against the Commission in any court.

Trust Indenture Act of 1939

Section 322, 15 U.S.C. § 77vvv, provides:

Court review of orders; jurisdiction of offenses and suits

(a) Orders of the Commission under this subchapter (including orders pursuant to the provisions of sections 77eee(b) and 77ggg(c) of this title) shall be subject to review in the same manner, upon the same conditions, and to the same extent, as provided in section 77i of this title, with respect to orders of the Commission under the Securities Act of 1933.

(b) Jurisdiction of offenses and violations under, and jurisdiction and venue of suits and actions brought to enforce any liability created by, this subchapter, or any rules or regulations or orders prescribed under the authority thereof, shall be as provided in section 77v(a) of this title.

Investment Company Act of 1940

Section 44, 15 U.S.C. § 80a-43, provides:

Jurisdiction of offenses and suits

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall

have jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this subchapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. A criminal proceeding based upon a violation of section 80a--33 of this title, or upon a failure to file a report or other document required to be filed under this subchapter, may be brought in the district wherein the defendant is an inhabitant or maintains his principal office or place of business. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this subchapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of Title 28. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against the Commission in any court. The Commission may intervene as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, section 80a--35(b) of this title at any stage of such action or suit prior to final judgment therein.

Investment Advisers Act of 1940

Section 214, 15 U.S.C. § 80b-14, provides:

Jurisdiction of offenses and suits

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this subchapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district

wherein any act or transaction constituting the violation occurred. Any suit or action to enjoin any violation of this subchapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 225 and 347 of Title 28, and section 7, as amended, of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against the Commission in any court.

APPENDIX B

<u>Date</u>	<u>Document Designation</u>	<u>Title I (Investment Company Act)</u>	<u>Title II (Investment Advisers Act)</u>
3/12/40	Committee Print S.	<u>Jurisdiction of Offenses and Suits</u> Sec. 40. (a) The provisions of section 25 of the Public Utility Holding Company Act of 1935 are hereby incorporated in this title as though fully set forth herein.	<u>Application of Title I</u> Sec. 203. The provisions of the following sections of title I are hereby incorporated in this title as though fully set forth herein: Sections 3, 34(b), 35(b) and (c), 36, 37(e) and (f), 38, 39, 40, 41, 42, 43, 45, 46, and 47.
3/14/40	S. 3580	<u>Jurisdiction of Offenses and Suits</u> Sec. 40. (a) The provisions of section 25 of the Public Utility Holding Company Act of 1935 are hereby incorporated in this title as though fully set forth herein.	<u>Application of Title I</u> Sec. 203. The provisions of the following sections of title I are hereby incorporated in this title as though fully set forth herein: Sections 3, 34(b), 35(b) and (c), 36, 37(e) and (f), 38, 39, 40, 41, 42, 43, 45, 46, and 47.
3/14/40	H.R. 8935	<u>Jurisdiction of Offenses and Suits</u> Sec. 40. (a) The provisions of section 25 of the Public Utility Holding Company Act of 1935 are hereby incorporated in this title as though fully set forth herein.	<u>Application of Title I</u> Sec. 203. The provisions of the following sections of title I are hereby incorporated in this title as though fully set forth herein: Sections 3, 34(b), 35(b) and (c), 36, 37(e) and (f), 38, 39, 40, 41, 42, 43, 45, 46, and 47.
5/13/40	Framework of Proposed Investment Company Bill (Title I)	<u>Court Review of Orders: Jurisdiction of Offenses and Suits</u> (Sections 39, 40 Present Bill) Sec. 31. The provisions of sections 39 and 40 in the present Bill are satisfactory.	[No comparable "Framework" for the Investment Advisers Act was found]

<u>Date</u>	<u>Document Designation</u>	<u>Title I (Investment Company Act)</u>	<u>Title II (Investment Advisers Act)</u>
5/24/40	Confidential Committee Print S. 3580	<u>Jurisdiction of Offenses and Suits</u> Sec. 40. (a) The provisions of section 25 of the Public Utility Holding Company Act of 1935 are hereby incorporated in this title as though fully set forth herein.	<u>Jurisdiction of Offenses and Suits</u> Sec. 213. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this title or the rules, regulations, or orders thereunder.
5/28/40	Confidential Committee Print S. 3580	<u>Jurisdiction of Offenses and Suits</u> Sec. 44. (a) The provisions of section 25 of the Public Utility Holding Company Act of 1935 are hereby incorporated in this title as though fully set forth herein.	<u>Jurisdiction of Offenses and Suits</u> Sec. 213. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this title or the rules, regulations, or orders thereunder.
5/31/40	Confidential Committee Print S. 3580	<u>Jurisdiction of Offenses and Suits</u> Sec. 44. (a) The provisions of section 25 of the Public Utility Holding Company Act of 1935 are hereby incorporated in this title as though fully set forth herein.	<u>Jurisdiction of Offenses and Suits</u> Sec. 213. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the

<u>Date</u>	<u>Document Designation</u>	<u>Title I (Investment Company Act)</u>	<u>Title II (Investment Advisers Act)</u>
6/4/40	Confidential Committee Print S. 3580	<u>Jurisdiction of Offenses and Suits</u> Sec. 44. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder.	jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this title or the rules, regulations, or orders thereunder. <u>Jurisdiction of Offenses and Suits</u> Sec. 213. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this title or the rules, regulations, or orders thereunder.
6/6/40	Confidential Committee Print S. 3580	<u>Jurisdiction of Offenses and Suits</u> Sec. 44. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and,	<u>Jurisdiction of Offenses and Suits</u> Sec. 213 214. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder,

Date

Document Designation

Title I (Investment Company Act)

Title II (Investment Advisers Act)

concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder.

and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this title or the rules, regulations, or orders thereunder.

6/6/40

S. 4108

Jurisdiction of Offenses and Suits

Sec. 44. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder.

Jurisdiction of Offenses and Suits

Sec. 214. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this title or the rules, regulations, or orders thereunder.

6/12/40

H.R. 10065

Jurisdiction of Offenses and Suits

Sec. 44. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial

Jurisdiction of Offenses and Suits

Sec. 214. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any

<u>Date</u>	<u>Document Designation</u>	<u>Title I (Investment Company Act)</u>	<u>Title II (Investment Advisers Act)</u>
		courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder.	violation of this title or the rules, regulations, or orders thereunder.
6/18/40	H.R. 10065 (Reported with amendments)	<u>Jurisdiction of Offenses and Suits</u> Sec. 44. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder.	<u>Jurisdiction of Offenses and Suits</u> Sec. 214. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this title or the rules, regulations, or orders thereunder.
7/30/40	S. 4108 amendments	No change in Sec. 44. from S. 4108 of 6/6/40	No change in Sec. 214. from S. 4108 of 6/6/40
8/5/40	H.R. 10065 On Second Reading	<u>Jurisdiction of Offenses and Suits</u> Sec. 44. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations	<u>Jurisdiction of Offenses and Suits</u> Sec. 214. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or

<u>Date</u>	<u>Document Designation</u>	<u>Title I (Investment Company Act)</u>	<u>Title II (Investment A</u>
		of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder.	the rules, regulations and, concurrently with courts, of all suits i violation of this titl lations, or orders the
8/22/40	Public Law No. 768	<u>Jurisdiction of Offenses and Suits</u> Sec. 44. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder.	<u>Jurisdiction of Offens</u> Sec. 214. The distric States and the United Territory or other pl jurisdiction of the U jurisdiction of violat the rules, regulations and, concurrently with courts, of all suits violation of this tit lations, or orders th

Advisers Act)

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in equity to enjoin any
le or the rules, regu-
ereunder.

Appendix C

TABLE OF CONTENTS

<u>Exhibit</u>	<u>Document</u>	<u>Date</u>
1	COMMITTEE PRINT S. _____	March 12, 1940
2	S.3580	March 14, 1940
3	H.R. 8935	March 14, 1940
4	FRAMEWORK OF PROPOSED INVESTMENT COMPANY BILL (TITLE I)	May 13, 1940
5	CONFIDENTIAL COMMITTEE PRINT S.3580	May 24, 1940
6	CONFIDENTIAL COMMITTEE PRINT S.3580	May 28, 1940
7	CONFIDENTIAL COMMITTEE PRINT S.3580	May 31, 1940
8	CONFIDENTIAL COMMITTEE PRINT S.3580	June 4, 1940
9	CONFIDENTIAL COMMITTEE PRINT S.3580	June 6, 1940
10	S.4108	June 6, 1940
11	H.R. 10065	June 12, 1940
12	H.R. 10065 (REPORTED WITH AMENDMENTS)	June 18, 1940
13	S.4108 (AMENDMENTS)	July 30, 1940
14	H.R. 10065 (ON SECOND READING)	August 5, 1940
15	PUBLIC LAW NO. 768	August 22, 1940

[COMMITTEE PRINT]

MARCH 12, 1940

76TH CONGRESS
3D SESSION

S.

IN THE SENATE OF THE UNITED STATES

MARCH , 1940

Mr. introduced the following bill; which was read twice and referred
to the Committee on

JURISDICTION OF OFFENSES AND SUITS

SEC. 40. (a) The provisions of section 25 of the Public Utility Holding Company Act of 1935 are hereby incorporated in this title as though fully set forth herein.

(b) Any criminal proceeding based upon a violation of section 34, or upon a failure to file a report or other document required to be filed under this title, may be brought in the district wherein the defendant is an inhabitant or maintains his or its principal office or place of business.

6 APPLICATION OF TITLE I

7 SEC. 203. The provisions of the following sections of
8 title I are hereby incorporated in this title as though fully
9 set forth herein: Sections 3, 34 (b), 35 (b) and (c), 36,
10 37 (e) and (f), 38, 39, 40, 41, 42, 43, 45, 46, and 47.

Exhibit 2

76TH CONGRESS
3D SESSION

S. 3580

IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 4), 1940

Mr. WAGNER introduced the following bill; which was read twice and referred
to the Committee on Banking and Currency

8 JURISDICTION OF OFFENSES AND SUITS

9 SEC. 40. (a) The provisions of section 25 of the Public
10 Utility Holding Company Act of 1935 are hereby incor-
11 porated in this title as though fully set forth herein.

12 (b) Any criminal proceeding based upon a violation of
13 section 34, or upon a failure to file a report or other document
14 required to be filed under this title, may be brought in the
15 district wherein the defendant is an inhabitant or maintains
16 his or its principal office or place of business.

6 APPLICATION OF TITLE I

7 SEC. 203. The provisions of the following sections of
8 title I are hereby incorporated in this title as though fully
9 set forth herein: Sections 3, 34 (b), 35 (b) and (c), 36,
10 37 (e) and (f), 38, 39, 40, 41, 42, 43, 45, 46, and 47.

Exhibit 3

76TH CONGRESS
3D SESSION

H. R. 8935

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 1940

Mr. LEA introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

8 JURISDICTION OF OFFENSES AND SUITS

9 SEC. 40. (a) The provisions of section 25 of the Public
10 Utility Holding Company Act of 1935 are hereby incor-
11 porated in this title as though fully set forth herein.

12 (b) Any criminal proceeding based upon a violation of
13 section 34, or upon a failure to file a report or other document
14 required to be filed under this title, may be brought in the
15 district wherein the defendant is an inhabitant or maintains
16 his or its principal office or place of business.

APPLICATION OF TITLE I

6
7 SEC. 203. The provisions of the following sections of
8 title I are hereby incorporated in this title as though fully
9 set forth herein: Sections 3, 34 (b), 35 (b) and (c), 36,
10 37 (e) and (f), 38, 39, 40, 41, 42, 43, 45, 46, and 47.

Exhibit 4

May 13, 1940.

FRAMEWORK OF PROPOSED INVESTMENT COMPANY BILL
(TITLE I)

Embodying Suggestions Resulting from Conferences Between
Securities and Exchange Commission and Representatives of
Investment Companies.

Court Review of Orders: Jurisdiction of Offenses and Suits

(Sections 39, 40 Present Bill)

The provisions of Sections 39 and 40 in the present Bill are satisfactory.

The "framework" deals only with the proposed Investment Company Bill. There is no comparable framework for the Investment Advisers Act.

Exhibit 5

[CONFIDENTIAL COMMITTEE PRINT]

MAY 24, 1940

76TH CONGRESS
3D SESSION

S. 3580

IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 4), 1940

Mr. WAGNER introduced the following bill: which was read twice and referred
to the Committee on Banking and Currency

JURISDICTION OF OFFENSES AND SUITS

21

22 SEC. 40. (a) The provisions of section 25 of the Public
23 Utility Holding Company Act of 1935 are hereby incor-
24 porated in this title as though fully set forth herein.

25 (b) Any criminal proceeding based upon a violation of
1 section 34, or upon a failure to file a report or other document
2 required to be filed under this title, may be brought in the
3 district wherein the defendant is an inhabitant or maintains
4 his or its principal office or place of business.

JURISDICTION OF OFFENSES AND SUITS

18

19 SEC. 213. The district courts of the United States, the
20 Supreme Court of the District of Columbia, and the United
21 States courts of any Territory or other place subject to the
22 jurisdiction of the United States shall have jurisdiction of
23 violations of this title or the rules, regulations, or orders
24 thereunder, and, concurrently with State and Territorial
25 courts, of all suits in equity to enjoin any violation of this
1 title or the rules, regulations, or orders thereunder. Any
2 criminal proceeding may be brought in the district wherein
3 any act or transaction constituting the violation occurred.
4 Any suit or action to enjoin any violation of, this title or
5 rules, regulations, or orders thereunder, may be brought in
6 any such district or in the district wherein the defendant
7 is an inhabitant or transacts business, and process in such
8 cases may be served in any district of which the defendant
9 is an inhabitant or transacts business or wherever the de-
10 fendant may be found. Judgments and decrees so rendered
11 shall be subject to review as provided in sections 128 and
12 240 of the Judicial Code, as amended, and section 7, as
13 amended, of the Act entitled "An Act to establish a court
14 of appeals for the District of Columbia", approved February
15 9, 1893. No costs shall be assessed for or against the Com-
16 mission in any proceeding under this title brought by or
17 against the Commission in any court.

Exhibit 6

28

[CONFIDENTIAL COMMITTEE PRINT]

MAY 28, 1940

76TH CONGRESS
3D SESSION

S. 3580

IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 4), 1940

Mr. WAGNER introduced the following bill; which was read twice and referred
to the Committee on Banking and Currency

20

JURISDICTION OF OFFENSES AND SUITS

21

22

23

24

SEC. 44. (a) The provisions of section 25 of the Public
Utility Holding Company Act of 1935 are hereby incor-
porated in this title as though fully set forth herein.

(b) Any criminal proceeding based upon a violation of
1 section 34, or upon a failure to file a report or other document
2 required to be filed under this title, may be brought in the
3 district wherein the defendant is an inhabitant or maintain
4 his or its principal office or place of business.

12

JURISDICTION OF OFFENSES AND SUITS

13 SEC. 213. The district courts of the United States, the
14 Supreme Court of the District of Columbia, and the United
15 States courts of any Territory or other place subject to the
16 jurisdiction of the United States shall have jurisdiction of
17 violations of this title or the rules, regulations, or orders
18 thereunder, and, concurrently with State and Territorial
19 courts, of all suits in equity to enjoin any violation of this
20 title or the rules, regulations, or orders thereunder. Any
21 criminal proceeding may be brought in the district wherein
22 any act or transaction constituting the violation occurred.
23 Any suit or action to enjoin any violation of, this title or
24 rules, regulations, or orders thereunder, may be brought in
25 any such district or in the district wherein the defendant
1 is an inhabitant or transacts business, and process in such
2 cases may be served in any district of which the defendant
3 is an inhabitant or transacts business or wherever the de-
4 fendant may be found. Judgments and decrees so rendered
5 shall be subject to review as provided in sections 128 and
6 240 of the Judicial Code, as amended, and section 7, as
7 amended, of the Act entitled "An Act to establish a court
8 of appeals for the District of Columbia", approved February
9 9, 1893. No costs shall be assessed for or against the Com-
10 mission in any proceeding under this title brought by or
11 against the Commission in any court.

Exhibit 7

[CONFIDENTIAL COMMITTEE PRINT]

MAY 31, 1940 -

75TH CONGRESS
3D SESSION

S. 3580

IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 4), 1940

Mr. WAGNER introduced the following bill; which was read twice and referred
to the Committee on Banking and Currency

10 JURISDICTION OF OFFENSES AND SUITS

11 SEC. 44. (a) The provisions of section 25 of the Public
12 Utility Holding Company Act of 1935 are hereby incor-
13 porated in this title as though fully set forth herein.

14 (b) Any criminal proceeding based upon a violation of
15 section 34, or upon a failure to file a report or other document
16 required to be filed under this title, may be brought in the
17 district wherein the defendant is an inhabitant or maintains
18 his or its principal office or place of business.

10

JURISDICTION OF OFFENSES AND SUITS

11 SEC. 213. The district courts of the United States, the
12 Supreme Court of the District of Columbia, and the United
13 States courts of any Territory or other place subject to the
14 jurisdiction of the United States shall have jurisdiction of
15 violations of this title or the rules, regulations, or orders
16 thereunder, and, concurrently with State and Territorial
17 courts, of all suits in equity to enjoin any violation of this
18 title or the rules, regulations, or orders thereunder. Any
19 criminal proceeding may be brought in the district wherein
20 any act or transaction constituting the violation occurred.
21 Any suit or action to enjoin any violation of, this title or
22 rules, regulations, or orders thereunder, may be brought in
23 any such district or in the district wherein the defendant
24 is an inhabitant or transacts business, and process in such
25 cases may be served in any district of which the defendant
1 is an inhabitant or transacts business or wherever the de-
2 fendant may be found. Judgments and decrees so rendered
3 shall be subject to review as provided in sections 128 and
4 240 of the Judicial Code, as amended, and section 7, as
5 amended, of the Act entitled "An Act to establish a court
6 of appeals for the District of Columbia", approved February
7 9, 1893. No costs shall be assessed for or against the Com-
8 mission in any proceeding under this title brought by or
9 against the Commission in any court.

Exhibit 8

[CONFIDENTIAL COMMITTEE PRINT]

JUNE 4, 1940

76TH CONGRESS
3D SESSION

S. 3580

IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 4), 1940

Mr. WAGNER introduced the following bill; which was read twice and referred
to the Committee on Banking and Currency

JURISDICTION OF OFFENSES AND SUITS

SEC. 44. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. A criminal proceeding based upon a violation of section 34, or upon a failure to file a report or other document required to be filed under this title, may be brought in the district wherein the defendant is an inhabitant or maintains his principal office or place of business. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended, and section 7, as amended, of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court.

4

JURISDICTION OF OFFENSES AND SUITS

5

SEC. 213. The district courts of the United States, the
6 Supreme Court of the District of Columbia, and the United
7 States courts of any Territory or other place subject to the
8 jurisdiction of the United States shall have jurisdiction of
9 violations of this title or the rules, regulations, or orders
10 thereunder, and, concurrently with State and Territorial
11 courts, of all suits in equity to enjoin any violation of this
12 title or the rules, regulations, or orders thereunder. Any
13 criminal proceeding may be brought in the district wherein
14 any act or transaction constituting the violation occurred.
15 Any suit or action to enjoin any violation of, this title or
16 rules, regulations, or orders thereunder, may be brought in
17 any such district or in the district wherein the defendant
18 is an inhabitant or transacts business, and process in such
19 cases may be served in any district of which the defendant
20 is an inhabitant or transacts business or wherever the de-
21 fendant may be found. Judgments and decrees so rendered
22 shall be subject to review as provided in sections 128 and
23 240 of the Judicial Code, as amended, and section 7, as
24 amended, of the Act entitled "An Act to establish a court
25 of appeals for the District of Columbia", approved February
1 9, 1893. No costs shall be assessed for or against the Com-
2 mission in any proceeding under this title brought by or
3 against the Commission in any court.

[CONFIDENTIAL COMMITTEE PRINT]

JUNE 6, 1940

76TH CONGRESS
3D SESSION

S. 3580

IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 4), 1940

Mr. WAGNER introduced the following bill; which was read twice and referred
to the Committee on Banking and Currency

[Omit the part struck through and insert the part printed in *italic*]

13 SEC. 44. The district courts of the United States and
14 the United States courts of any Territory or other place sub-
15 ject to the jurisdiction of the United States shall have juris-
16 diction of violations of this title or the rules, regulations, or
17 orders thereunder, and, concurrently with State and Terri-
18 torial courts, of all suits in equity and actions at law brought
19 to enforce any liability or duty created by, or to enjoin any
20 violation of, this title or the rules, regulations, or orders there-
21 under. Any criminal proceeding may be brought in the dis-
22 trict wherein any act or transaction constituting the violation
23 occurred. A criminal proceeding based upon a violation of
24 section 34, or upon a failure to file a report or other document
1 required to be filed under this title, may be brought in the
2 district wherein the defendant is an inhabitant or maintains
3 his principal office or place of business. Any suit or action
4 to enforce any liability or duty created by, or to enjoin any
5 violation of, this title or rules, regulations, or orders there-
6 under, may be brought in any such district or in the district
7 wherein the defendant is an inhabitant or transacts business,
8 and process in such cases may be served in any district of
9 which the defendant is an inhabitant or transacts business or
10 wherever the defendant may be found. Judgments and de-
11 crees so rendered shall be subject to review as provided in
12 sections 128 and 240 of the Judicial Code, as amended, and
13 section 7, as amended, of the Act entitled "An Act to estab-
14 lish a court of appeals for the District of Columbia", approved
15 February 9, 1893. No costs shall be assessed for or against
16 the Commission in any proceeding under this title brought
17 by or against the Commission in any court.

18

JURISDICTION OF OFFENSES AND SUITS

19

SEC. ~~213~~ 214. The district courts of the United States, ~~the~~
20 ~~Supreme Court of the District of Columbia,~~ and the United
21 States courts of any Territory or other place subject to the
22 jurisdiction of the United States shall have jurisdiction of
23 violations of this title or the rules, regulations, or orders
24 thereunder, and, concurrently with State and Territorial
25 courts, of all suits in equity to enjoin any violation of this
1 title or the rules, regulations, or orders thereunder. Any
2 criminal proceeding may be brought in the district wherein
3 any act or transaction constituting the violation occurred.
4 Any suit or action to enjoin any violation of, this title or
5 rules, regulations, or orders thereunder, may be brought in
6 any such district or in the district wherein the defendant
7 is an inhabitant or transacts business, and process in such
8 cases may be served in any district of which the defendant
9 is an inhabitant or transacts business or wherever the de-
10 fendant may be found. Judgments and decrees so rendered
11 shall be subject to review as provided in sections 128 and
12 240 of the Judicial Code, as amended, and section 7, as
13 amended, of the Act entitled "An Act to establish a court
14 of appeals for the District of Columbia", approved February
15 9, 1893. No costs shall be assessed for or against the Com-
16 mission in any proceeding under this title brought by or
17 against the Commission in any court.

Calendar No. 1866

76TH CONGRESS
3D SESSION

S. 4108

[Report No. 1775]

IN THE SENATE OF THE UNITED STATES

JUNE 6 (legislative day, MAY 28), 1940

Mr. WAGNER introduced the following bill; which was read twice and referred
to the Committee on Banking and Currency

JUNE 6 (legislative day, MAY 28), 1940

Reported by Mr. WAGNER, without amendment

17

JURISDICTION OF OFFENSES AND SUITS

18 SEC. 44. The district courts of the United States and
19 the United States courts of any Territory or other place sub-
20 ject to the jurisdiction of the United States shall have juris-
21 diction of violations of this title or the rules, regulations, or
22 orders thereunder, and, concurrently with State and Terri-
23 torial courts, of all suits in equity and actions at law brought
24 to enforce any liability or duty created by, or to enjoin any
25 violation of, this title or the rules, regulations, or orders there-
1 under. Any criminal proceeding may be brought in the dis-
2 trict wherein any act or transaction constituting the violation
3 occurred. A criminal proceeding based upon a violation of
4 section 34, or upon a failure to file a report or other document
5 required to be filed under this title, may be brought in the
6 district wherein the defendant is an inhabitant or maintains
7 his principal office or place of business. Any suit or action
8 to enforce any liability or duty created by, or to enjoin any
9 violation of, this title or rules, regulations, or orders there-
10 under, may be brought in any such district or in the district
11 wherein the defendant is an inhabitant or transacts business,
12 and process in such cases may be served in any district of
13 which the defendant is an inhabitant or transacts business or
14 wherever the defendant may be found. Judgments and de-
15 crees so rendered shall be subject to review as provided in
16 sections 128 and 240 of the Judicial Code, as amended, and
17 section 7, as amended, of the Act entitled "An Act to estab-
18 lish a court of appeals for the District of Columbia", approved
19 February 9, 1893. No costs shall be assessed for or against
20 the Commission in any proceeding under this title brought
21 by or against the Commission in any court.

23

JURISDICTION OF OFFENSES AND SUITS

24

25 SEC. 214. The district courts of the United States and
1 the United States courts of any Territory or other place sub-
2 ject to the jurisdiction of the United States shall have juris-
3 diction of violations of this title or the rules, regulations, or
4 orders thereunder, and, concurrently with State and Territo-
5 rial courts, of all suits in equity to enjoin any violation of this
6 title or the rules, regulations, or orders thereunder. Any
7 criminal proceeding may be brought in the district wherein
8 any act or transaction constituting the violation occurred.
9 Any suit or action to enjoin any violation of this title or
10 rules, regulations, or orders thereunder, may be brought in
11 any such district or in the district wherein the defendant
12 is an inhabitant or transacts business, and process in such
13 cases may be served in any district of which the defendant
14 is an inhabitant or transacts business or wherever the de-
15 fendant may be found. Judgments and decrees so rendered
16 shall be subject to review as provided in sections 128 and
17 240 of the Judicial Code, as amended, and section 7, as
18 amended, of the Act entitled "An Act to establish a court
19 of appeals for the District of Columbia", approved February
20 9, 1893. No costs shall be assessed for or against the Com-
21 mission in any proceeding under this title brought by or
 against the Commission in any court.

76TH CONGRESS
3D SESSION

H. R. 10065

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 1940

Mr. COLE of Maryland introduced the following bill; which was referred to the
Committee on Interstate and Foreign Commerce

18 SEC. 44. The district courts of the United States and
19 the United States courts of any Territory or other place sub-
20 ject to the jurisdiction of the United States shall have juris-
21 diction of violations of this title or the rules, regulations, or
22 orders thereunder, and, concurrently with State and Terri-
23 torial courts, of all suits in equity and actions at law brought
24 to enforce any liability or duty created by, or to enjoin any
25 violation of, this title or the rules, regulations, or orders there-
1 under. Any criminal proceeding may be brought in the dis-
2 trict wherein any act or transaction constituting the violation
3 occurred. A criminal proceeding based upon a violation of
4 section 34, or upon a failure to file a report or other document
5 required to be filed under this title, may be brought in the
6 district wherein the defendant is an inhabitant or maintains
7 his principal office or place of business. Any suit or action
8 to enforce any liability or duty created by, or to enjoin any
9 violation of, this title or rules, regulations, or orders there-
10 under, may be brought in any such district or in the district
11 wherein the defendant is an inhabitant or transacts business,
12 and process in such cases may be served in any district of
13 which the defendant is an inhabitant or transacts business or
14 wherever the defendant may be found. Judgments and de-
15 crees so rendered shall be subject to review as provided in
16 sections 128 and 240 of the Judicial Code, as amended, and
17 section 7, as amended, of the Act entitled "An Act to estab-
18 lish a court of appeals for the District of Columbia", approved
19 February 9, 1893. No costs shall be assessed for or against
20 the Commission in any proceeding under this title brought
21 by or against the Commission in any court.

24 SEC. 214. The district courts of the United States and
25 the United States courts of any Territory or other place sub-
1 ject to the jurisdiction of the United States shall have juris-
2 diction of violations of this title or the rules, regulations, or
3 orders thereunder, and, concurrently with State and Territo-
4 rial courts, of all suits in equity to enjoin any violation of this
5 title or the rules, regulations, or orders thereunder. Any
6 criminal proceeding may be brought in the district wherein
7 any act or transaction constituting the violation occurred.
8 Any suit or action to enjoin any violation of this title or
9 rules, regulations, or orders thereunder, may be brought in
10 any such district or in the district wherein the defendant
11 is an inhabitant or transacts business, and process in such
12 cases may be served in any district of which the defendant
13 is an inhabitant or transacts business or wherever the de-
14 fendant may be found. Judgments and decrees so rendered
15 shall be subject to review as provided in sections 128 and
16 240 of the Judicial Code, as amended, and section 7, as
17 amended, of the Act entitled "An Act to establish a court
18 of appeals for the District of Columbia", approved February
19 9, 1893. No costs shall be assessed for or against the Com-
20 mission in any proceeding under this title brought by or
21 against the Commission in any court.

76TH CONGRESS
3D SESSION

H. R. 10065

Union Calendar No. 998

[Report No. 2639]

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 1940

Mr. COLE of Maryland introduced the following bill; which was referred to the
Committee on Interstate and Foreign Commerce

JUNE 18, 1940

Reported with amendments, committed to the Committee of the Whole House
on the state of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in *italic*]

4 SEC. 44. The district courts of the United States and
5 the United States courts of any Territory or other place sub-
6 ject to the jurisdiction of the United States shall have juris-
7 diction of violations of this title or the rules, regulations, or
8 orders thereunder, and, concurrently with State and Terri-
9 torial courts, of all suits in equity and actions at law brought
10 to enforce any liability or duty created by, or to enjoin any
11 violation of, this title or the rules, regulations, or orders there-
12 under. Any criminal proceeding may be brought in the dis-
13 trict wherein any act or transaction constituting the violation
14 occurred. A criminal proceeding based upon a violation of
15 section 34, or upon a failure to file a report or other document
16 required to be filed under this title, may be brought in the
17 district wherein the defendant is an inhabitant or maintains
18 his principal office or place of business. Any suit or action
19 to enforce any liability or duty created by, or to enjoin any
20 violation of, this title or rules, regulations, or orders there-
21 under, may be brought in any such district or in the district
22 wherein the defendant is an inhabitant or transacts business,
23 and process in such cases may be served in any district of
24 which the defendant is an inhabitant or transacts business or
25 wherever the defendant may be found. Judgments and de-
1 crees so rendered shall be subject to review as provided in
2 sections 128 and 240 of the Judicial Code, as amended, and
3 section 7, as amended, of the Act entitled "An Act to estab-
4 lish a court of appeals for the District of Columbia", approved
5 February 9, 1893. No costs shall be assessed for or against
6 the Commission in any proceeding under this title brought
7 by or against the Commission in any court.

9 SEC. 214. The district courts of the United States and
10 the United States courts of any Territory or other place sub-
11 ject to the jurisdiction of the United States shall have juris-
12 diction of violations of this title or the rules, regulations, or
13 orders thereunder, and, concurrently with State and Territo-
14 rial courts, of all suits in equity to enjoin any violation of this
15 title or the rules, regulations, or orders thereunder. Any
16 criminal proceeding may be brought in the district wherein
17 any act or transaction constituting the violation occurred.
18 Any suit or action to enjoin any violation of this title or
19 rules, regulations, or orders thereunder, may be brought in
20 any such district or in the district wherein the defendant
21 is an inhabitant or transacts business, and process in such
22 cases may be served in any district of which the defendant
23 is an inhabitant or transacts business or wherever the de-
24 fendant may be found. Judgments and decrees so rendered
25 shall be subject to review as provided in sections 128 and
1 240 of the Judicial Code, as amended, and section 7, as
2 amended, of the Act entitled "An Act to establish a court
3 of appeals for the District of Columbia", approved February
4 9, 1893. No costs shall be assessed for or against the Com-
5 mission in any proceeding under this title brought by or
6 against the Commission in any court.

Exhibit 13

76TH CONGRESS
2D SESSION

S. 4108

IN THE SENATE OF THE UNITED STATES

JULY 30 (legislative day, JULY 29), 1940
Ordered to lie on the table and to be printed

There were no changes in the jurisdictional sections of either the Investment Company Act or the Investment Advisers Act in the amendments of July 30, 1940.

Calendar No. 2111

76TH CONGRESS
3^D SESSION

H. R. 10065

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 1940

Read twice and ordered to be placed on the calendar

3 JURISDICTION OF OFFENSES AND SUITS

4 SEC. 44. The district courts of the United States and
5 the United States courts of any Territory or other place sub-
6 ject to the jurisdiction of the United States shall have juris-
7 diction of violations of this title or the rules, regulations, or
8 orders thereunder, and, concurrently with State and Terri-
9 torial courts, of all suits in equity and actions at law brought
10 to enforce any liability or duty created by, or to enjoin any
11 violation of, this title or the rules, regulations, or orders there-
12 under. Any criminal proceeding may be brought in the dis-
13 trict wherein any act or transaction constituting the violation
14 occurred. A criminal proceeding based upon a violation of
15 section 34, or upon a failure to file a report or other document
16 required to be filed under this title, may be brought in the
17 district wherein the defendant is an inhabitant or maintains
18 his principal office or place of business. Any suit or action
19 to enforce any liability or duty created by, or to enjoin any
20 violation of, this title or rules, regulations, or orders there-
21 under, may be brought in any such district or in the district
22 wherein the defendant is an inhabitant or transacts business,
23 and process in such cases may be served in any district of
24 which the defendant is an inhabitant or transacts business or
1 wherever the defendant may be found. Judgments and de-
2 crees so rendered shall be subject to review as provided in
3 sections 128 and 240 of the Judicial Code, as amended, and
4 section 7, as amended, of the Act entitled "An Act to estab-
5 lish a court of appeals for the District of Columbia", approved
6 February 9, 1893. No costs shall be assessed for or against
7 the Commission in any proceeding under this title brought
8 by or against the Commission in any court.

8

JURISDICTION OF OFFENSES AND SUITS

9

SEC. 214. The district courts of the United States and
10 the United States courts of any Territory or other place sub-
11 ject to the jurisdiction of the United States shall have juris-
12 diction of violations of this title or the rules, regulations, or
13 orders thereunder, and, concurrently with State and Territo-
14 rial courts, of all suits in equity to enjoin any violation of this
15 title or the rules, regulations, or orders thereunder. Any
16 criminal proceeding may be brought in the district wherein
17 any act or transaction constituting the violation occurred.
18 Any suit or action to enjoin any violation of this title or
19 rules, regulations, or orders thereunder, may be brought in
20 any such district or in the district wherein the defendant
21 is an inhabitant or transacts business, and process in such
22 cases may be served in any district of which the defendant
23 is an inhabitant or transacts business or wherever the de-
24 fendant may be found. Judgments and decrees so rendered
25 shall be subject to review as provided in sections 128 and
1 240 of the Judicial Code, as amended, and section 7, as
2 amended, of the Act entitled "An Act to establish a court
3 of appeals for the District of Columbia", approved February
4 9, 1893. No costs shall be assessed for or against the Com-
5 mission in any proceeding under this title brought by or
6 against the Commission in any court.

[PUBLIC—No. 768—76TH CONGRESS]

[CHAPTER 686—3D SESSION]

[H. R. 10065]

AN ACT

To provide for the registration and regulation of investment companies and investment advisers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

JURISDICTION OF OFFENSES AND SUITS.

SEC. 44. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. A criminal proceeding based upon a violation of section 34, or upon a failure to file a report or other document required to be filed under this title, may be brought in the district wherein the defendant is an inhabitant or maintains his principal office or place of business. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended, and section 7, as amended, of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court.

JURISDICTION OF OFFENSES AND SUITS

SEC. 214. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enjoin any violation of this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended, and section 7, as amended, of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- x
ROBERT ABRAHAMSON and MARJORIE
ABRAHAMSON,

Plaintiffs-Appellants,

-against-

MALCOLM K. FLESCHNER, etal.

Defendants-Appellees.
----- x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

GEORGE A. SCHOLZE, being duly sworn, deposes and says that he is an attorney associated with Sullivan & Cromwell, attorneys for Defendants Malcolm K. Fleschner, William J. Becker and Fleschner Becker Associates; that on the 30th day of January, 1976 he caused the within supplemental brief to be served upon the following attorneys at the following addresses, by having two true copies of the same securely enclosed in a postpaid wrapper to be deposited in the Post Office Box regularly maintained by the United States Government at 48 Wall Street, Borough of Manhattan, City and State of New York, directed to said attorneys at said addresses as follows:

Shea Gould Climenko Kramer & Casey
Attorneys for Plaintiffs-Appellants
330 Madison Avenue
New York, N.Y. 10017

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116 John Street
New York, N.Y. 10038

Paul Gonson, Esq.
Associate General Counsel
Securities and Exchange Commission
Washington, D.C. 20549

George A. Scholze

Sworn to before me this
2nd day of February, 1976

Eileen L. Franklyn
Notary Public

EILEEN L. FRANKLYN
NOTARY PUBLIC, State of New York
No. 31-1303130
Qualified in New York County
Commission Expires March 30, 1977